

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.09 Atlantic Sea Scallop Harvesting Season (2)(C) and 11.22 2012-13 Closures (20) East Bay and South Bay Area. Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure of the East Bay and South Bay Area in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in this area may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. Prolonged fishing for the rest of the season in this area would cause damage to the resource due to mortality of scallops contacted by dredges during fishing operations. Incidental mortality on scallops caused by dragging has been estimated to be at least 13-17% per tow. Continued, sustained fishing in the East Bay and South Bay Area for the rest of the season is likely to have a negative impact on abundance of the 90-100 mm scallops that will recruit into the fishery for the 2013-14 season. A significant immediate conservation closure of East Bay and South Bay as well as a reduction of four days (two subsequent Sundays and Mondays-March 10,11,17,18) from the remaining Zone 3 calendar is necessary to lessen the impact of dragging activities on sublegal product in the area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in East Bay and South Bay as well as a reduction in the Zone 3 calendar of four days in order to reduce the risk of unusual damage and imminent depletion as authorized by [12 M.R.S. §6171](#)(3).

EFFECTIVE DATE: March 9, 2013

AGENCY CONTACT PERSON:	Trish De Graaf (207-624-6554)
AGENCY NAME:	Department of Marine Resources
ADDRESS:	State House Station 21 Augusta, Maine 04333-0021
WEB SITE:	http://www.maine.gov/dmr/rulemaking/
E-MAIL:	Trisha.DeGraaf@maine.gov
FAX:	(207) 624-6024
TTY:	(888) 577-6690 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.09 Atlantic Sea Scallop Harvesting Season

1. The Atlantic Sea Scallop harvesting season in Maine's territorial waters in Zone One (1) and Zone (2) is open December 2, 2012 through March 20, 2013, both days inclusive, with the following exceptions:
 - A. In December 2012 and March 2013, fishing is prohibited on Thursdays, Fridays and Saturdays, except Thursday December 27 and Friday December 28, 2012 shall be open. Fishing is also prohibited on Monday December 24, Tuesday December 25, 2012, and Monday December 31, 2012.
 - B. In January 2013 and February 2013, fishing is prohibited on Saturdays and Sundays plus Tuesday January 1, 2013 shall be closed and Friday February 1, 2013 shall be closed.
2. The Atlantic Sea Scallop harvesting season in Maine's territorial waters in Zone Three (3) is open December 2, 2012 through January 21, 2013, both days inclusive and on January 23, 2012; and March 3, 2013 through March 20, 2013, both days inclusive, with the following exceptions:
 - A. In December 2012, fishing is prohibited on Thursdays, Fridays, and Saturdays, except Thursday December 27 and Friday December 28, 2012 shall be open. Fishing is also prohibited on Monday December 24, Tuesday December 25, and Monday December 31, 2012.
 - B. In January 2013, fishing is prohibited on Saturdays and Sundays, plus Tuesday January 1, 2013 shall be closed.
 - C. In March 2013, fishing is prohibited on Sundays, Mondays, Thursdays, Fridays, and Saturdays after March 9, 2013.

11.22 2012-13 Closures

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Mussel Ridge (6) which shall be open during the month of December in accordance with the dates specified in section 11.09. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Upper Chandler Bay

Northern boundary: South of a line starting at the Roque Island Cable Area between Jonesport and Roque Island.

Southern boundary: North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing to the most southern tip of Bonney Point, Roque Island.

- (2) Mud Hole Channel
Northern boundary: South of a line drawn from the most eastern tip of Mud Hole Point, Great Wass Island to the most western tip of Crow Point, Head Harbor Island.
Southern boundary: North of a line from the most eastern tip of Little Pond Head, Great Wass Island to the most southern tip of Freeman Rock, then continuing on to the most southern tip of Mistake Island, continuing from the most eastern tip of Mistake Island to the most southern tip of Steele Harbor Island; then from the northern end of Great Herring Cove, Steele Harbor Island to the most southern tip of Man Island.
- (3) Moosabec Reach
Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.
Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.
- (4) Inner Harbor/Deep Hole
West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44 12.407 N Longitude 068 38.819 W.
- (5) Blue Hill Salt Pond
All waters of the Blue Hill Salt Pond.
- (6) Mussel Ridge
Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44 02.805 N Longitude 069 04.393 W to RW "PA" Mo (A) GONG at; then continuing southwest to the northern tip of Two Bush Island.
Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.
- (7) Ocean Point
West of a line drawn from Emerson Point, at the southern most tip of Ocean Point, Boothbay at Latitude 43 48.852 N Longitude 069 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N "8" AND East of a line draw from R N "8" to the most southwestern tip of Ocean Point at Latitude 43 48.874 N and Longitude 069 36.332 W.
- (8) Eastern Casco Bay
Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "4" at Drunkers Ledges.
Western boundary: East and North of a line draw from R N "4" at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43 42.950N Longitude 70 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43 43.043N Longitude 70 00.128W.

(9) Hussey Sound

Northern boundary: South of a line drawn from the most northern tip of Diamond Cove, Great Diamond Island at Latitude 43 41.047 N Longitude 070 11.311 W, East to the most western tip of Long Island at Latitude 43 41.011 N Longitude 070 10.369 W.

Eastern boundary: West of a line drawn from the most southern tip of Jerry Point, Long Island to the most northeastern tip of Peaks Island at Latitude 43 39.801 N 70 10.622 W.

Southern Boundary: North of a line drawn from the most northwestern tip of Peaks Island at Latitude 43 40.403 N 070 11.237 W to the eastern shore of Great Diamond Island Latitude 43 40.547 N Longitude 070 11.528 W.

(10) Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgan's Bay Area)

All waters of the Blue Hill Salt Pond; as well as waters North of a line drawn from Stills Point, Blue Hill Neck to the most northern point of Long Island, and then continuing to the most southwestern point of Newbury Neck.

(11) Muscongus Area

North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to a point directly South of Marshall Point, Port Clyde at Latitude 43 54.84 N Longitude 69 15.60 W then due North to the most southern tip of Marshall Point, Port Clyde.

(12) Southeast Harbor

North of a line starting at the most southwestern tip of Stinson Neck, Deer Isle running west to Coles Point on Whitmore Neck, Deer Isle; this includes all of Southeast Harbor.

(13) Jonesport/Machias Area

(a) The Reach: East and north of a line starting at the most eastern end of Tibbett Island going due north to the closest point of land on Moose Neck and then east to the most northern end of Ram Island at Latitude 44° 29'41.56" N Longitude 67°37'53.31" W then on to the most western end of Slate Island and then from the eastern most tip of Slate Island to the nearest point of land along the southern shore of Slate Island Cove on Great Wass Island and west of a line starting at the western end of the breakwater Sawyer's Cove the southeast to the most western end of Pig Island and then due south to the closest point of land of Great Wass Island.

(b) Chandler Bay/Englishman's Bay: North of the Roque Island Cable Area running between Jonesport and Roque Island and north of a line starting at the most northeastern point of Great Head, Roque, Island; then northeast to the most southern end of Shoppee Point, Roque Bluffs.

(c) Machias Area: North and east of a line starting at Bucks Head, Machiasport proceeding east to the southern end of Northwest Head on Cross Island then due south to the 3-mile line, and west of a line drawn due south from Great Head, Cutler to the 3-mile limit.

(14) Gouldsboro & Dyer Bays

North of a line drawn from the eastern most tip of Young's Point, Corea, to the western most tip of Sheep Island, then following the shore to the most eastern point of Sheep Island to the most southern tip of Sally Island, the following the shore to the most eastern point of Sally Island to the most southern tip of Eastern Island, the following the shore to the most eastern point of Eastern Island to the

southern most tip of The Castle and then continuing in a easterly direction to Bear Cove on Petite Manan Point, Stueben at Latitude 44° 24'25.65" N Longitude 67° 54'24.98" W including all of Gouldsboro and Dyer Bays.

(15)Damariscotta River

North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(16)Somes Sound

North and West of a line drawn from the southern most tip of Sargent Point, Northeast Harbor, southwesterly to the most northern tip of Kings Point, Southwest Harbor, including all of Somes Sound.

(17)Inner Western Penobscot Area

Western boundary: East and North of a line drawn from the most southern tip of Marshall Point, Port Clyde due South to the intersection of Latitude 43° 55' N, and following this latitude due East to its intersection on the east shore of Mosquito Island, St. George, then southeast to the R "2" BELL at Latitude 43° 54.71'N Longitude 69° 13.06'W.

Eastern boundary: South and West of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island and continuing in a southwest direction to the R "2" BELL at Latitude 43° 54.71'N Longitude 69° 13.06'W (south of Mosquito Island, Port Clyde).

(18)Union River

Eastern boundary: West and North of a line drawn from the most southern tip of Oak Point, Trenton, to the most northern tip of Black Island, then from the most southern tip of Black Island to the most northern top of North Point, Bartlett Island.

Western boundary: East and North of a line drawn from the most southwestern point of Burnt Point, Newbury Neck, to the most northwestern point of Western Point, Bartlett Island.

(19)Whiting Bay and Denny's Bay Area

West of a line starting at the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott, to include all of Whiting Bay and Denny's Bay.

(20)East Bay and South Bay Area

Western Boundary: The western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott.

Eastern Boundary: A straight line from the most southwestern tip of Shackford Head, Eastport to the nearest point of land on the northern tip of Comstock Point, Lubec.

Remove the following Zone Three (3) calendar as if struck through at the end of Chapter 11:

2012 - 2013 Scallop Season Calendar

Zone Three (3) - Cobscook Bay/St. Croix River

44 Day Season

O Limited Access Areas Divers

O Limited Access Areas Draggers

December 2012						
S	M	Tu	W	Th	F	S
						1
2 O	3 O	4 O	5 O	6	7	8
9 O	10 O	11 O	12 O	13	14	15
16 O	17 O	18 O	19 O	20	21	22
23 O	24	25	26 O	27 O	28 O	29
30 O	31					

17

January 2013						
S	M	Tu	W	Th	F	S
		1	2 O	3 O	4 O	5
6	7 O	8 O	9 O	10 O	11 O	12
13	14 O	15 O	16 O	17 O	18 O	19
20	21 O	22	23 O	24	25	26
27	28	29	30	31		

15

February 2013						
S	M	Tu	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

0

March 2013						
S	M	Tu	W	Th	F	S
					1	2
3 O	4 O	5 O	6 O	7	8	9
10 O	11 O	12 O	13 O	14	15	16
17 O	18 O	19 O	20 O	21	22	23
24	25	26	27	28	29	30
31						

12

Total Days
44

Total Limited Access Areas Days
15

Total Weeks
11

Zone 3 Limited Access Areas are Whiting/Denny's Bay & the St. Croix River

Insert the following Zone Three (3) calendar as if underlined at the end of Chapter 11:

2012 - 2013 Scallop Season Calendar

Zone Three (3) - Cobscook Bay/St. Croix River

40 Day "Split" Season

O Limited Access Areas Divers

O Limited Access Areas Draggers

December 2012						
S	M	Tu	W	Th	F	S
						1
2	3	4	5	6	7	8
O	O	O	O			
9	10	11	12	13	14	15
O	O	O	O			
16	17	18	19	20	21	22
O	O	O	O			
23	24	25	26	27	28	29
O			O	O	O	
30	31					
O						

17

January 2013						
S	M	Tu	W	Th	F	S
		1	2	3	4	5
			O	O	O	
6	7	8	9	10	11	12
	O	O	O	O	O	
13	14	15	16	17	18	19
	O	O	O	O	O	
20	21	22	23	24	25	26
	O		O			
27	28	29	30	31		

15

February 2013						
S	M	Tu	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

0

March 2013						
S	M	Tu	W	Th	F	S
					1	2
3	4	5	6	7	8	9
O	O	O	O			
10	11	12	13	14	15	16
		O	O			
17	18	19	20	21	22	23
		O	O			
24	25	26	27	28	29	30
31						

8

Total Days

40

Total Limited Access Areas Days

15

Total Weeks

11

Zone 3 Limited Access Areas are Whiting/Denny's Bay & the St. Croix River

Basis Statement

Chapter 11.09 Atlantic Sea Scallop Harvesting Season (2)(C) and 11.22 2012-13 Closures (20) East Bay and South Bay Area. Emergency Regulations

Justification:

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than a half million pounds each year since 2001 (Figure 1). In 2009, due to scallop populations throughout the state being at extremely low levels, the Department enacted a series of management measures that included closed areas, limiting entry, reducing the season, increasing the ring size that allowed the resource to rebuild.

Since 2002, the Department has also been conducting a dredge-based fishery-independent survey of the state scallop resource. Coast-wide surveys in 2002, 2003, and 2011 found the resource to be healthiest in Cobscook Bay and small portions of eastern Maine, with sporadic and poor abundance along the rest of the coast. The 2006, 2007 and 2012 surveys indicated Cobscook Bay had by far the highest scallop density in the state with the 2012 survey recording the highest amount of harvestable biomass yet observed for this area. Cobscook Bay is the only area exhibiting relatively high scallop production in recent years. Because of this relative abundance, the scallop fishery in Cobscook Bay has been intensive with over 100 boats participating in some seasons. The 2012 survey also indicated an exceptionally high (1.02 m^{-2}) abundance of sublegal scallops in Cobscook Bay (Figures 2 & 3) with an average of 85% sublegal and/or seed scallops in tows containing ≥ 750 scallops in South Bay, East Bay and Pennamaquan River substrata (Figure 4; Table 1). Prolonged fishing for the rest of the season in this area would cause damage to the resource due to mortality of scallops contacted by dredges during fishing operations. Incidental mortality on scallops caused by dragging has been estimated to be at least 13-17% per tow. Continued, sustained fishing in in the East Bay and South Bay Area for the rest of the season is likely to have a negative impact on abundance of the 90-100 mm scallops that will recruit into the fishery for the 2013-14 season.

Maine Marine Patrol, sea sampling and port sampling observations in combination with direct industry reports, indicate a total of 81 vessels are targeting scallops in the Cobscook Bay area during the week of March 3. While conducting routine boarding inspections of vessels, Marine Patrol observed extremely high amounts of sublegal product being brought up in tows. However, Marine Patrol also reported that nearly all harvesters were properly sorting catch prior to shucking which resulted in the entire sublegal product being returned to the water. The highest meat count recorded by Marine Patrol has been 33 meats per pound which is below the required 35 meats per pound. However, it is the mortality suffered by this sublegal product during fishing operations-either on the bottom or at the surface where freezing can occur-that concerns the Department given the high number of vessels fishing in the area. Due to the concerted effort by industry to diligently return sublegal product to the water, the Department will implement a targeted closure of the areas containing the highest concentration of sublegal scallops in the East Bay and South Bay Area. Four of the eight remaining days (two subsequent Sundays and Mondays-March 10,11, 17,18) will be removed from the Zone 3 (Cobscook Bay & St. Croix Area) calendar to lessen the impact of dragging activities on sublegal product in the area that remains open. Subsequently, the Lower Cobscook Bay Area (South and East of a line drawn from Shackford Head, Eastport to Comstock Point, Lubec) and the St. Croix River (including the St. Croix Limited Access Area) will still remain open for harvest opportunity on Tuesdays and Wednesdays for the remainder of the Zone 3 season.

The Department is concerned that continued harvesting in the East Bay and South Bay Area during the remainder of the 2012-13 scallop fishing season may damage sublegal scallops that could be caught during subsequent fishing seasons. Continued fishing would also reduce the remaining legal-sized broodstock that is essential for successful spawning and rebuilding. Previous emergency rulemaking actions in the 2012/2013 scallop season included adjustments to the daily possession limit and closures in Blue Hill Area, Muscongus Area, Southeast Harbor, Jonesport/Machias Area, Gouldsboro & Dyer Bays, Damariscotta River, Somes Sound, Inner

Western Penobscot Area, Union River, Whiting Bay and Denny's Bay Area. Due to this heavy resource harvesting, an immediate conservation closure due to unusual damage and imminent depletion is necessary for the East Bay and South Bay Area and a reduction of four days (two subsequent Sundays and Mondays) from the Zone 3 calendar for the area that will remain open. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in for the East Bay and South Bay Area as well as a reduction of four days (two subsequent Sundays and Mondays) from the Zone 3 calendar as authorized by [12 M.R.S. §6171\(3\)](#).

In accordance with [5 M.R.S. §8052, sub-§5-A](#), a statement of the impact on small business has been prepared and is available upon request from the DMR Commissioner's office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

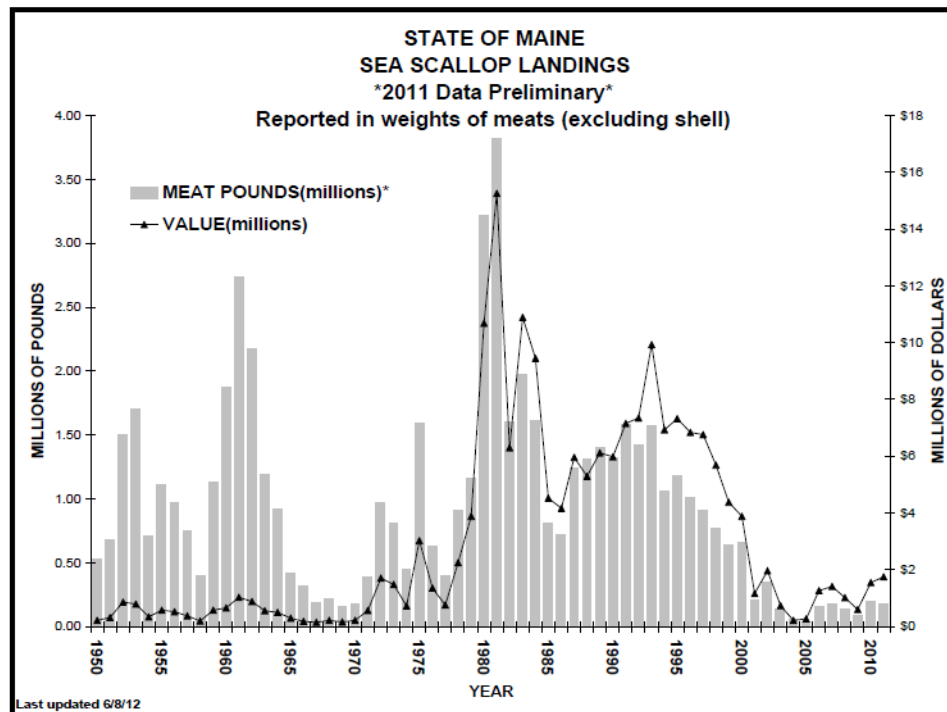


Figure 1. Maine scallop landings from 1950 to 2011.

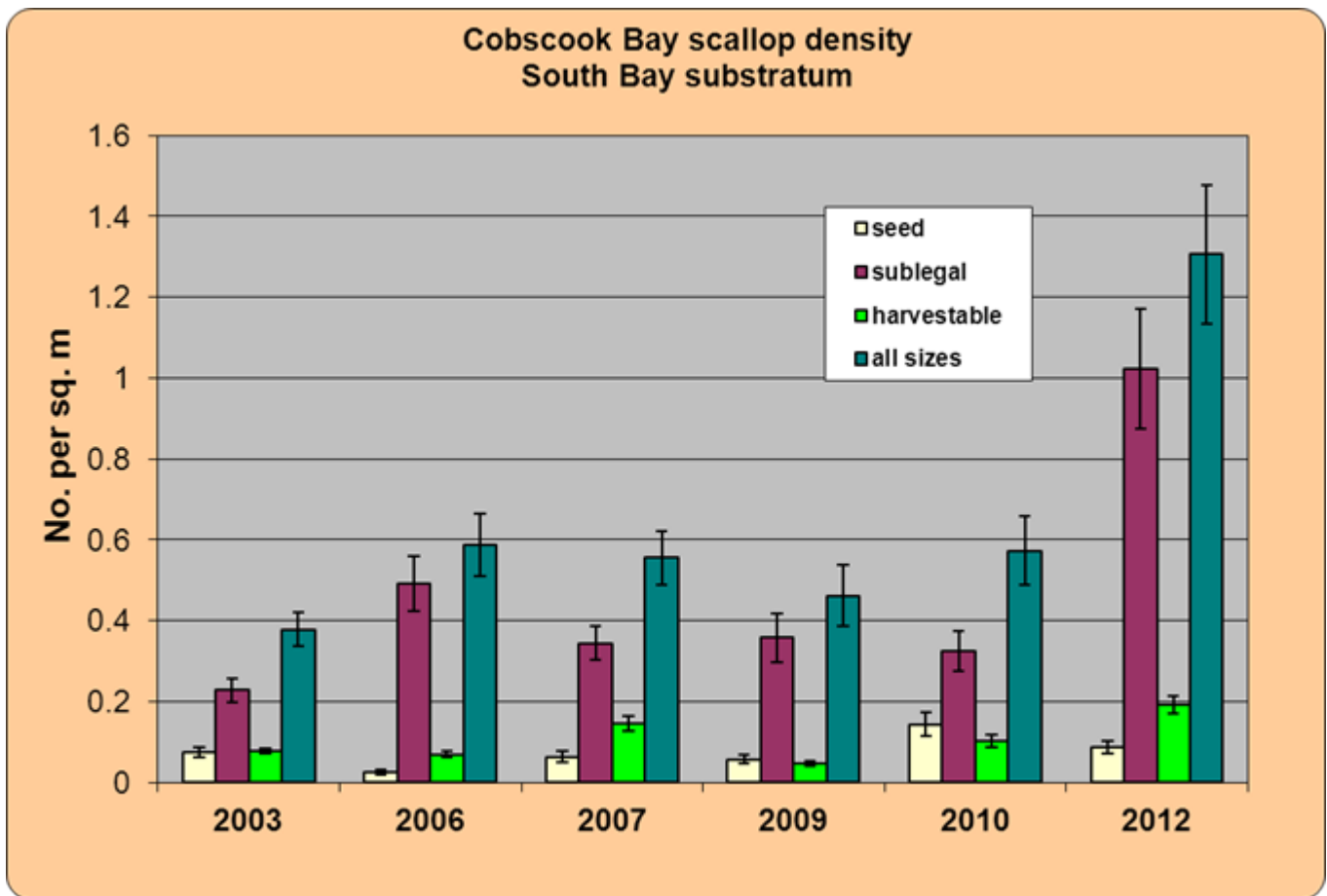


Figure 2. Mean scallop density (with standard error, unadjusted for dredge efficiency) by size class, South Bay substratum of Cobscook Bay.

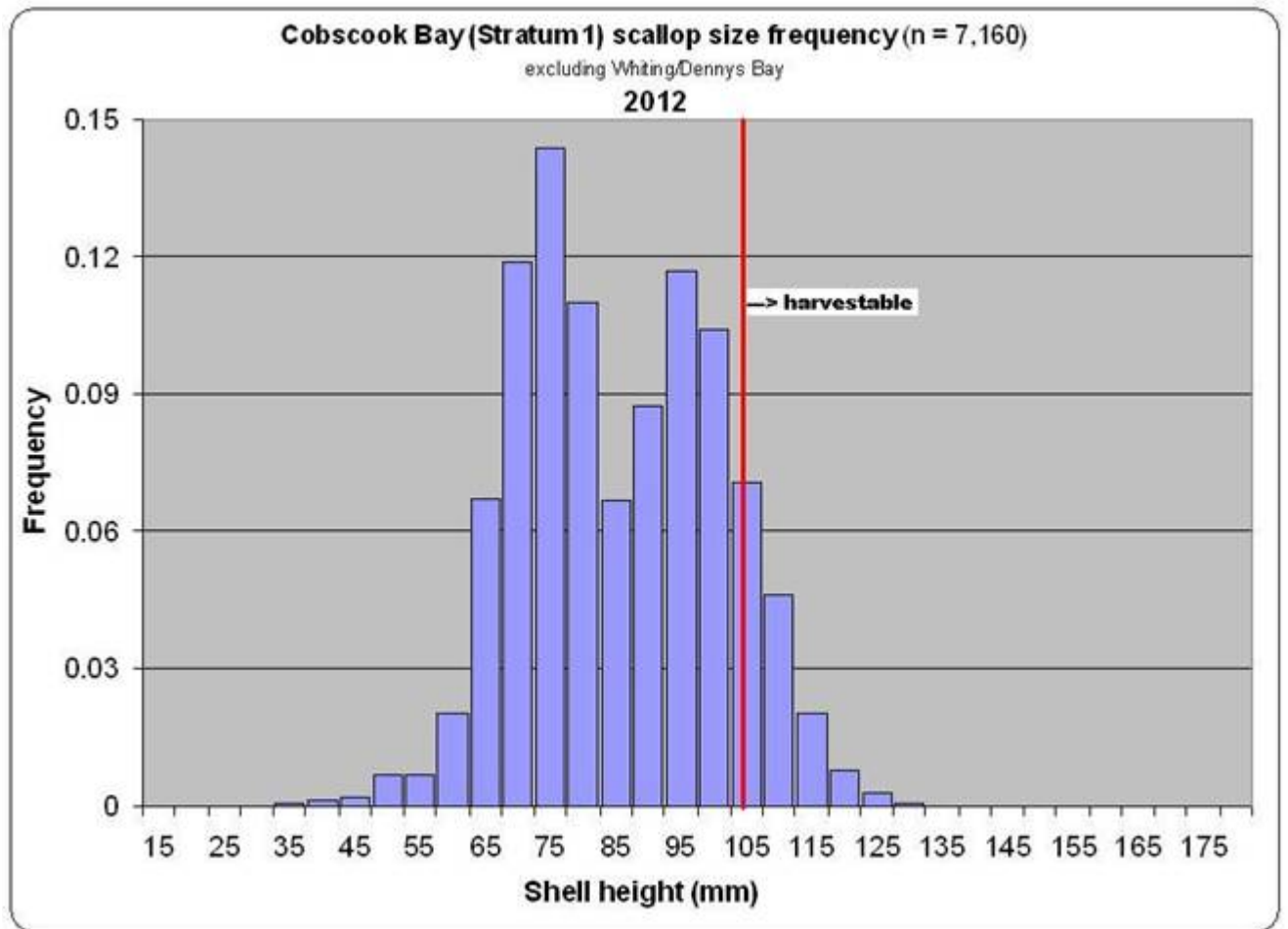


Figure 3. Size frequency (5 mm increments) of scallops in Cobscook Bay, 2012 ME DMR scallop survey.

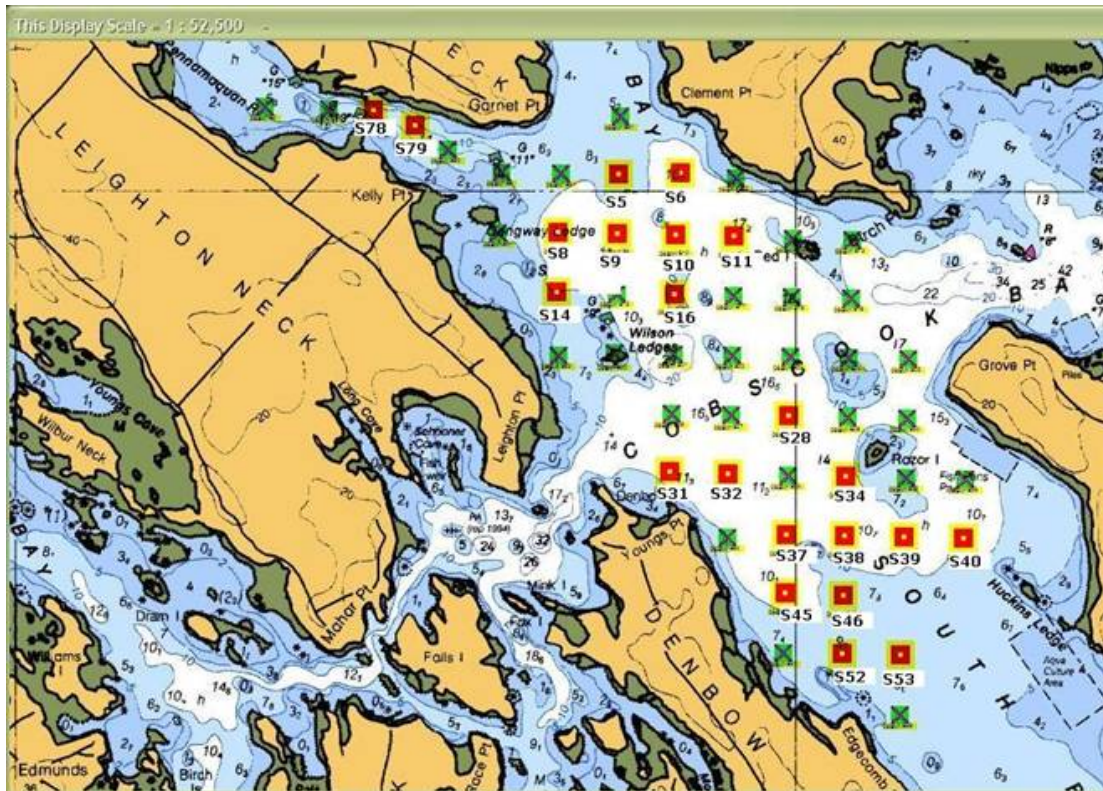


Figure 4. High abundance (≥ 750 scallops) tows (indicated by red symbols) in South Bay, East Bay and Pennamaquan River, 2012 ME MR scallop survey.

<u>Station</u>	<u>No. scallops in tow</u>	<u>% <4 inch shell height</u>
S32	1,655	94.8
S10	2,571	93.9
S8	1,850	92.7
S11	1,471	92.1
S78	798	91.2
S38	1,700	91.1
S40	2,038	90.7
S31	823	90.2
S6	3,085	89.8
S79	1,434	89.3
S34	985	89.1
S14	1,504	88.8
S39	1,235	87.4
S9	1,444	86.4
S5	1,755	86.2
S52	1,246	81.7
S28	871	80.2
S37	757	79.4
S16	1,243	79.0
S53	1,036	77.7
S45	948	73.8
S46	1,223	72.2

Table 1. Total number of scallops in tow and percentage which were sublegal and/or seed in high abundance tows (South Bay, East Bay, Pennamaquan R.), 2012 ME DMR scallop survey.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Kevin Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; E-mail: kevin.rousseau@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 11.09 Atlantic Sea Scallop Harvesting Season (2)(C) and 11.22 2012-13 Closures (20) East Bay and South Bay Area. Emergency Regulations

STATUTORY AUTHORITY: [12 M.R.S. §6171](#)(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure of the East Bay and South Bay Area in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in this area may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. Prolonged fishing for the rest of the season in this area would cause damage to the resource due to mortality of scallops contacted by dredges during fishing operations. Incidental mortality on scallops caused by dragging has been estimated to be at least 13-17% per tow. Continued, sustained fishing in the East Bay and South Bay Area for the rest of the season is likely to have a negative impact on abundance of the 90-100 mm scallops that will recruit into the fishery for the 2013-14 season.

A significant immediate conservation closure of East Bay and South Bay as well as a reduction of four days (two subsequent Sundays and Mondays-March 10,11,17,18) from the remaining Zone 3 calendar is necessary to lessen the impact of dragging activities on sublegal product in the area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in East Bay and South Bay as well as a reduction in the Zone 3 calendar of four days in order to reduce the risk of unusual damage and imminent depletion as authorized by [12 M.R.S. §6171](#)(3).

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.